

LIBRARY
SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
OCT 31 1973
MICHAEL RODAK, JR., CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1973

NO. 73-589

UNION OIL COMPANY OF CALIFORNIA,
Petitioner,

VERSUS

LLOYD DUGAS, PELICAN CONSTRUCTION COMPANY, INC., AND TRI-STATE INSURANCE COMPANY,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

## BRIEF FOR RESPONDENTS PELICAN CONSTRUCTION COMPANY, INC. AND TRI-STATE INSURANCE COMPANY IN OPPOSITION

PATRICK J. BURKE
CLARENCE A. FROST
1207 Whitney Building
New Orleans, Louisiana
Telephone: (504) 581-6373

Attorneys for Respondents.

# INDEX


| | Page |
|---|---|
| Citations | i |
| Statement of the Case | 1 |
| Correction of Opinion Below | 5 |
| Argument | 5 |
| Conclusion | 10 |
| Certificate | 11 |
| Appendix A - Service Agreement | 12 |
| Appendix B - Decree of District Court | 15 |
| Appendix C - Letter from Court of Appeals correcting opinion | 17 |

# INDEX

Page

## CITATIONS


Page

**Cases:**

Dunn v. Brown & Root, Inc., 455 F.2d 717, 719, (8th Cir. 1972) ---------- 8

Italia v. Oregon Stevedoring Co., 376 U.S. 315 (1964) ---------- 10

Meyers v. Pittsburgh S.S. Co., 165 F.2d 642, 644 (6th Cir. 1948) --------- 8

Smith v. Indiana Lumbermens Mutual Insurance Co., 175 So. (2d) 414, 416 (La. App. 1965) ---------- 8-9

Sun Oil Co. v. Kneten, 164 F.2d 806, 809 (5th Cir. 1947) ---------- 8

Terry v. A. P. Green Fire Brick Company, 164 F.Supp. 184, 189 (E.D. Ark. 1958) ---------- 8

Whisenat v. Brewster - Bartle Offshore Co., 446 F.2d 394 (5th Cir. 1971) ----- 6

**Miscellaneous:**

41 Am. Jur. (2d) Independent Contractors, Section 25 ---------- 8

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

---

NO. 73-589

---

UNION OIL COMPANY OF CALIFORNIA,
Petitioner

VERSUS

LLOYD DUGAS, PELICAN CONSTRUCTION COMPANY, INC. AND TRI-STATE INSURANCE COMPANY,
Respondents.

---

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

---

# REPLY BRIEF

---

## STATEMENT OF THE CASE

Plaintiff, Lloyd Dugas, by original and amended complaints, brought this action for damages under the Jones Act, general maritime law and for maritime tort against Pelican Construction Company (Pelican), his employer, and Pelican's employer's liability insurers, Tri-State Insurance Company and Underwriters at Lloyd's (collectively Tri-State), and against

Union Oil Company of California (Union) and Rowan Drilling Company (Rowan). Various cross-claims were filed by the defendants, including one by Union against Pelican and Tri-State for indemnity under the contractual indemnity provisions contained in their Service Agreement or for a breach of the implied warranty of workmanlike performance.

Tri-State appeared and defended Pelican under the terms of its employer's liability policy. Pelican retained separate counsel for its defense of Union's contractual indemnity claim.

Pursuant to their drilling contract, Rowan furnished a submersible drilling barge and its personnel to drill a well for Union to a contract depth of 13,000 feet. If Union desired further drilling after contract depth was reached, operations were then conducted by Rowan on a day work basis and drilling procedures were then prescribed by Union. At the time of the accident in question, Rowan was operating on a day rate basis and Union had a full time representative aboard the drilling barge, Mr. Kenneth Ditch. (App. C of Petition, pp. 30-31).

Pelican was in the business of furnishing labor crews and under a Service Contract with Union agreed to "Furnish labor crews and equipment as requested by Union's representatives." (App. A, hereto; App. C of Petition, p.31). Union requested that Pelican supply one labor crew which was to report to the Rowan drilling barge in the marshes of Louisiana to unload drill pipe. The plaintiff, Lloyd Dugas, was a member of this labor crew.

The Pelican crew reported to the Rowan drilling barge at about ten o'clock on the

morning of September 8, 1964, and was instructed by Mr. Ditch to unload drilling pipe from a pipe barge to the Rowan drilling barge as and when such pipe was needed by Rowan. The Pelican crew was still working at 4:00 or 4:30 o'clock in the morning on the following day when plaintiff was struck by a load of drill pipe. The trial judge found that at this time, the Pelican crew had been aboard the barge for 18 hours without relief and with only one meal. (App. C of Petition, p. 32).

In his Memorandum Opinion the trial judge concluded that Union failed to exercise reasonable care for the safety of the men furnished to it by Pelican and assigned this failure as the sole proximate cause of the accident. (App. C of Petition, p.35). The trial judge found no negligence causally contributing to the accident on the part of Pelican or its employees. (App. C of Petition, pp. 35-36). The trial judge then held that plaintiff was a seaman for purposes of the Jones Act and a borrowed employee of Union's and that he should have judgment jointly against Union under the Jones Act and against Rowan for the unseaworthiness of its drilling barge. Rowan's liability resulted only from its ownership of the barge and its nondelegable duty to furnish a seaworthy vessel.

The trial judge then considered the cross-claims and held that Pelican was required to indemnify Union under the provisions of their contract. Since Tri-State's policies did not cover Pelican for obligations assumed under this contract, Union's claim against Tri-State was denied. (App. C of Petition, pp. 44-48).

Pursuant to the trial judge's findings

and disposition of the indemnity questions a decree (App. B hereto) was entered:

1. Casting Union and Rowan in judgment to the plaintiff, jointly, severally and solidarily.

2. In favor of Union and against Rowan for contribution as a joint tortfeasor in the amount of one-half of the judgment, but rejecting Union's cross-claim for indemnity against Rowan.

3. In favor of Union and against Pelican under Pelican's contractual indemnity for the one-half of the judgment remaining against Union.

4. Rejecting Union's cross-claim against Tri-State under the provisions of the employer's liability policies.

Union and Rowan appealed to the Fifth Circuit Court of Appeals. After a thorough review of the evidence, the Court of Appeals reversed the trial judge with respect to his findings that the plaintiff was a Jones Act seaman holding that he was a Sieracki seaman to whom the warranty of seaworthiness was owed. The Court of Appeals also reversed the trial judge as to his finding that plaintiff was Union's employee, holding that Pelican was an independent contractor. (App. A of Petition, pp. 18-21).

However, the Court of Appeals then affirmed the lower court's finding of Union's negligence. (App. A of Petition, pp. 21-24). In doing so, the Court of Appeals noted that, under all of the circumstances, Union had the responsibility to take the necessary steps to furnish relief to the Pelican crew. The Court

of Appeals also agreed that Union's negligence rendered the Rowan barge unseaworthy and that the district court had correctly cast Rowan in judgment to plaintiff as jointly and solidarily liable.

Rowan had not filed a cross-claim against Union for indemnity in this case but the Court of Appeals noted that Rowan had instituted separate proceedings. (App. A of Petition, p.14). Rowan has not petitioned this Court for relief but, we understand, has paid the plaintiff one-half of the judgment.

Pelican did not appeal the district court's imposition of liability upon it under its contract with Union and at this point is liable to Union under the terms of the decree. Thus, respondents' brief is directed only toward meeting the questions raised by Union insofar as they touch upon Pelican's liability under the employer's liability coverages provided by Tri-State.

## CORRECTION OF OPINION BELOW

We wish to call the Court's attention to a correction made by the Court of Appeals in its opinion. On page 16 of the petition (page 6 of the Court's opinion) the Court of Appeals has deleted the words "and Tri-State" which appear in the ninth line from the bottom of the page. (App. C, hereto).

## ARGUMENT

MAY IT PLEASE THE COURT:

There are no conflicting appellate decisions, either federal or state, on the issues here presented. This case is an isolated tort matter which was decided by the Fifth Circuit

Court of Appeals on accepted legal principles based upon factual determinations made by the trial judge. It is respectfully submitted that there are neither special nor important reasons for granting review of this case on writ of certiorari.

A review of the opinions of the lower courts will reveal that under the particular facts of this case Union was found negligent because of its failure, through its representative aboard the drilling barge, to use reasonable care for the plaintiff's safety. Further disposition of the remaining issues flowed from this basic determination. Thus, the decision below presents no important legal issues which warrant review by this Court on certiorari.

Moreover, the district court granted Union's indemnity claim against Pelican under their Service Agreement from which Pelican has not appealed, and, in the final analysis, Union cannot say it is aggrieved.

## I.

## THE DECISION BELOW IS CLEARLY CORRECT

Based upon the facts found by the trial judge, and approved by the Court of Appeals, the result reached below is correct. Plaintiff, as a Sieracki seaman, was entitled to the warranty of seaworthiness and would recover from Rowan in any event. Union's negligence rendered Rowan's drilling barge unseaworthy. It is apparent from the findings and holdings of the lower courts that Rowan's liability is technical, flowing only from its nondelegable duty to furnish a seaworthy vessel. If Union owed no duty to plaintiff, it clearly owed one to Rowan under Whisenat

v. Brewster - Bartle Offshore Co., 446 F. 2d 394 (5th Cir. 1971). Had Rowan filed a cross-claim against Union (as it now intends to do) Rowan would have been entitled to indemnity from Union. Thus, Union would be cast in judgment in any event.

## II.

## UNION, AS AN EMPLOYER-CONTRACTEE, OWED THE EMPLOYEES OF ITS INDEPENDENT CONTRACTOR THE DUTY OF REASONABLE CARE.

Although the negligence of Union was found by the trial judge and the Court of Appeals to have been the sole proximate cause of the accident in which plaintiff sustained his injuries, Union attempts to use the holding of the Court of Appeals that Pelican was an independent contractor to relieve itself of this finding by asserting that as an employer, or contractee, of an independent contractor Union can have no liability to an employee of the independent contractor for its own negligence in the absence of a duty owed under the general maritime law. This issue was met and disposed of correctly by the lower courts.

In the words of the trial judge:

"...Union's failure to exercise reasonable care for the safety of the men furnished to it by Pelican was negligence, and its failure to provide a sufficient number of men to do the work that had to be done resulted in an unseaworthy, undermanned ship...." (Emphasis supplied, App. C of Petition, pp. 34,35).

As noted above, after determining that Pelican was an independent contractor, the Court of Appeals affirmed the trial judge's findings of Union's negligence and set forth Union's duty to the plaintiff, as follows:

> "Summarizing, we agree with the district court that Union's failure to exercise reasonable care for the safety of the Pelican men was negligence and that Union's failure to provide a sufficient number of men resulted in an unseaworthy, undermanned ship." (Emphasis supplied, App. A of Petition, p. 24).

No negligence causally contributing to the accident was found on the part of the employees of Pelican. Thus, this is not a situation in which the employer has been found vicariously liable for the negligence of its independent contractor but is, rather, a situation in which there is affirmative negligence on the part of the employer-contractee.

The employer of an independent contractor is answerable to third persons, including employees of the independent contractor, for its own negligence.[1] The duty owed by the employer is one of reasonable care.[2]

1/ 41 Am. Jur. (2d) Independent Contractors, Section 25.

2/ Dunn v. Brown & Root, Inc., 455 F.2d 717, 719, (8th Cir.1972); Meyers v. Pittsburgh S.S. Co., 165 F.2d 642, 644 (6th Cir.1948); Sun Oil Co. v. Kneten, 164 F.2d 806,809 (5th Cir.1947); Terry v. A. P. Green Fire Brick Company, 164 F.Supp. 184, 189 (E.D.

(continued on next page)

It is clear that Union is aware of the duty owed to plaintiff since in the second question presented for review it also argues that the Court of Appeals should have remanded the case "for a determination of whose duty it was and who breached the duty of failing to exercise reasonable care for the plaintiff's safety." (Petition, p. 7).

III.

THE COURT OF APPEALS HAD SUFFICIENT FACTS BEFORE IT TO DISPOSE OF ALL ISSUES PRESENTED BY THE APPEAL.

Union argues that once the Court of Appeals had determined that Pelican was an independent contractor, the case should have been remanded for additional findings of fact, particularly as to where responsibility lay for ordering a relief crew. The Court of Appeals discussed the evidence relating to this issue and concluded that the responsibility was Union's, through its representative. The Court stated:

> "Ditch's failure to exercise reasonable prudence in making prior arrangements to provide rest periods or for a substitute crew constituted serious negligence." (App. A of Petition, pp. 12,13).

Union attempts to convince the Court that the failure of the Court of Appeals to

---

2/ (Cont.)
Ark. 1958); Smith v. Indiana Lumbermens Mutual Insurance Co., 175 So.(2d) 414, 416 (La. App. 1965).

remand conflicts with decisions of this Court, particularly Italia v. Oregon Stevedoring Co., 376 U.S. 315 (1964). We submit that the question raised by petitioner is not the one decided by this Court in Italia in which the case was remanded to the Court of Appeals to consider an issue which had not been briefed or argued in this Court.

## CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

Patrick J. Burke
Clarence A. Frost
1207 Whitney Building
New Orleans, Louisiana, 70130

By: _____
Patrick J. Burke

## CERTIFICATE

I hereby certify that a copy of the foregoing has been served upon Mr. H. Alva Brumfield, III, 509 St. Louis Street, Baton Rouge, Louisiana; Mr. A. R. Christovich, Jr., 1815 American Bank Building, New Orleans, Louisiana; Mr. Henry B. Alsobrook, Jr., 4500 One Shell Square, New Orleans, Louisiana, 70139; Mr. Nicholas Pugh, Post Office Box 3118, Lafayette, Louisiana; and Mr. Donald Organ, 1740 National Bank of Commerce Building, New Orleans, Louisiana, by depositing same in the United States Mails, postage prepaid, this 30th day of October, 1973.

Patrick J. Burke

Appendix A

No. 0070

## SERVICE CONTRACT

THIS AGREEMENT, entered into this 20 day of October, A. D., 19 62, between UNION OIL COMPANY OF CALIFORNIA, a corporation of the State of California, hereinafter called "UNION", and PELICAN CONSTRUCTION COMPANY, INC., hereinafter called "CONTRACTOR",

WITNESSETH:

IN CONSIDERATION OF the mutual promises and covenants herein contained, UNION engages the CONTRACTOR as an independent contractor to furnish equipment and perform the services hereinafter provided, all in accordance with the terms and conditions herein contained.

1. DESCRIPTION OF SERVICES TO BE PERFORMED BY CONTRACTOR:

Furnish labor crews and equipment as requested by Union's representatives.

2. TERMS OF PAYMENT

For the above service(s) UNION agrees to pay CONTRACTOR at the following rates:

As per quoted rates.

(Continued Page 2)

**3. TIME OF PAYMENT:**

CONTRACTOR shall bill UNION at the Prudential Building, Houston, Texas, at the end of each month during the completion of assigned work. Payment shall be forwarded to the Prudential Building, Houston, Texas, within ten days after the work to be done by CONTRACTOR has been accepted by UNION as being in compliance with all the terms, conditions and requirements of this Contract, provided CONTRACTOR shall have given UNION that there are no liens or lawsuits claims on or against UNION or the property by reason of the operations of CONTRACTOR hereunder.

**4. DURATION OF CONTRACT:**

This agreement may be terminated at the option of either party by giving the other party thirty (30) days notice in writing to that effect. For the purpose of giving this notice, or any notice that may be necessary in the performance of this contract, the address of UNION shall be and remain the Prudential Building, Houston, Texas, and the address of CONTRACTOR shall be and remain Box E, Van Bar, Louisiana until changed by written notice to the said notice by either party to the other, in writing, of a change of address.

**5. PAYMENT OF CLAIMS:**

CONTRACTOR shall promptly pay all bills for labor and for materials purchased by him, or other indebtedness incurred in or arising out of this contract, and shall, if requested, submit proper receipts for all labor employed, and receipted statements or invoices for all material used, and protect and hold UNION harmless from any and all liens whatsoever arising out of the work performed by CONTRACTOR hereunder.

**6. INDEMNIFICATION AND INSURANCE:**

CONTRACTOR assumes the duty hereby to hold harmless, indemnify and defend UNION against any and all liability for injuries and damages to CONTRACTOR himself and to CONTRACTOR'S employees, agents, sub-contractors and guests, incident to or resulting from any and all operations performed by CONTRACTOR under any of the terms of this contract.

CONTRACTOR assumes all liability, while operations are being conducted, for losses to UNION'S or CONTRACTOR'S equipment as a result of negligence of CONTRACTOR, its employees, agents or representatives, or their failure to properly carry out orders of UNION'S representatives as agreed by both parties.

CONTRACTOR shall comply with all applicable compensation laws of the State of Louisiana and shall carry and maintain throughout the period of this Contract, at CONTRACTOR'S own cost, all insurance policies of the types and amounts shown below:

A. Workman's Compensation & Employers' Liability Insurance
   a. Statutory State of Louisiana: including all areas involved in operations covered under this Contract.
   b. United States Longshoremen's and Harbor Workers' Compensation Act Endorsement or amended to provide protection with respect to the "Outer Continental Shelf Lands Act."
   c. Coverage "B"—Employers' Liability—extended to cover the liability of the Contractor under the "Death On the High Seas Act."
      Limits: 100,000 each person
      300,000 each accident
   d. Admiralty Coverage including coverage for Transportation, Wages, Maintenance and Cure.
      Limits: 100,000 each person
      300,000 each accident
   e. Endorsement providing that a claim "in rem" shall be treated as a claim against the Contractor.
   f. Endorsement providing that a claim against UNION by an employee of CONTRACTOR based on the "Borrowed Servant Doctrine" will, for the purpose of this insurance, be treated as a claim arising under this policy against CONTRACTOR and that UNION and/or its Underwriters will reserve the benefit of this insurance with respect to such claims.

B. Comprehensive General Liability Insurance
   a. Standard Comprehensive General conditions including coverage for blowout and explosion.
   b. Contractors' Protective—work let or sub let.
   c. Product—Completed Operations.
   d. Contractual Liability specifically insuring contract between UNION and CONTRACTOR.
   e. Limits of Liability:
      Bodily Injury 100,000 each person
      300,000 each accident
      Property Damage 100,000 each accident
      100,000 aggregate
   f. Endorsement providing that a claim "in rem" shall be treated as a claim against the CONTRACTOR.

C. Automobile Liability Insurance
   a. Automobiles covered:
      Owned, Non-Owned and Hired Automobiles.
   b. Limits of Liability:
      Bodily Injury 100,000 each person
      300,000 each accident
      Property Damage 50,000 each accident

D. Vessels NOT APPLICABLE
   a. Hull Insurance
      Tug Vessels—Tug Syndicate Form 1952 or equivalent.
      All other vessels—American Institute Time Hulls Form December 1952 or equivalent.
   b. Protection and Indemnity Insurance
      Ocean Clauses Ed-23 Rv. 1/1/66 or equivalent.
   c. Excess Protection and Indemnity Insurance.
      Excess Protection and Indemnity—Excess of Primary Limits up to _____ each accident or occurrence.
   d. Name Union as an Assured on all Hull and P. & I. Policies.
   e. Delete clause limiting Underwriter's liability with respect to an Assured other than an Owner as respects to Union.
   f. Maximum Deductible for Hull and Protection & Indemnity _____ each accident or occurrence.

Maintenance of said approved insurance shall be a condition precedent to the payment of CONTRACTOR of the compensation for the work or services herein provided. If CONTRACTOR employs sub-contractors to perform any work hereunder, then CONTRACTOR agrees to require such sub-contractors to obtain, carry, maintain and keep in force during the time in which they are engaged in performing any work hereunder, policies of insurance as set forth in this paragraph 6. The policies of insurance, with all endorsements thereon, shall be submitted to and approved by UNION before the work contemplated in this Contract to be performed is commenced. Failure to maintain said insurance, approved as aforesaid, shall constitute sufficient grounds for the immediate cancellation of suspension of this Contract by Union.

CONTRACTOR will promptly, following execution of this Contract and before the performance of work hereunder, secure from its insurers (and sub-contractor's insurers) a waiver of subrogation against UNION in all of the insurance policies (including those policies of the sub-contractor) set forth in paragraph 6, with the exception of Workmen's Compensation but including all insurance carried by CONTRACTOR protecting against loss of or damage to the property and equipment employed in the performance of this Contract.

Certificates of Insurance for all of these policies set forth in paragraph 6 are to be mailed to Union by the insurers and are to be received in Union's office, Union office before the performance by the Contractor of work covered by this Service Contract.

(Contract Page 2)

5. BREACH.

Time is expressly declared to be the essence of this Contract. If either party hereto defaults in the performance of this Contract, the other party has the option of terminating the Contract.

6. FORCE MAJEURE.

This contract is subject to all Federal, State and Local laws, orders, rules and regulations and neither UNION nor CONTRACTOR shall be liable for any delay or damages due, occasioned or caused to a result of such laws, orders, rules or regulations or by strikes, action of the elements or casualty beyond the control of the parties, and any delay due to above causes or any of them shall not be deemed to be a breach of or failure to perform this contract, or any part thereof, and the party hereunder shall be excused from any delay or failure to carry out the said terms, and the contract shall give notice and full particulars of the cause of said delay to the other party, promptly after the occurrence of the cause relied upon and the cause of said delay as far as possible, shall be remedied with all reasonable dispatch.

7. ASSIGNMENT OF CONTRACT.

CONTRACTOR shall not assign this Contract, or sub-contract any part of the work, without written consent of UNION.

8. WAIVER.

No waiver by UNION of any of the terms, provisions, or conditions hereof shall be effective unless said waiver shall be in writing and signed by a duly authorized officer of UNION.

9. LABOR, EQUIPMENT, MATERIALS, SUPPLIES AND SERVICES.

9.1 In the performance of the work herein contemplated, CONTRACTOR is an independent Contractor, with the authority to control and direct the performance of the details of the work, UNION being interested only in the results obtained, but the work and related herein shall meet the approval of UNION. CONTRACTOR specifically agrees that all persons employed by CONTRACTOR in performing the work covered by this Contract, or by CONTRACTOR'S sub-contractors, are not the employees of UNION for any purpose whatsoever. CONTRACTOR hereby agrees to reimburse UNION for all contributions, taxes, insured and liability compensation by UNION under unemployment compensation or insurance laws covering employees of CONTRACTOR or CONTRACTOR'S sub-contractors.

9.2 CONTRACTOR represents that all tools and equipment used hereunder have been or will be furnished, and all work and labor to be performed hereunder will be performed in strict accordance with all applicable Federal, State, and Local laws, rules, regulations and orders.

9.3 CONTRACTOR agrees to defend UNION and hold it harmless against any and all loss or liability arising from interference or alleged interference of power covering operations, and equipment owned by CONTRACTOR in its operations under this agreement.

9.4 CONTRACTOR must keep and maintain equipment furnished by UNION in good condition, at CONTRACTOR'S expense and upon the termination of this contract, turn over same to UNION in as good condition as when received, subject, however, to ordinary wear and tear.

9.5 CONTRACTOR agrees that it will examine, before using, all materials, equipment and supplies furnished by UNION for the Contract herein undertaken, and will exercise reasonable diligence to report to UNION any defects therein in time to allow UNION to replace same without delaying operations.

10. SPECIAL PROVISIONS:

_____

_____

_____

IN WITNESS WHEREOF, the parties have executed this AGREEMENT in quintuplicate as of the day and year first above written.

WITNESS:

_____
FOR UNION

_____
FOR CONTRACTOR

UNION OIL COMPANY OF CALIFORNIA

By _____
Vice President—Gulf Division
UNION

PELICAN CONSTRUCTION COMPANY, INC.

By _____
CONTRACTOR

(Continued Page 15)

Appendix B

1224

FILED
MAR 22 1972
ALTON L. CLERK, CLERK
BY [signature] DEPUTY

IN THE UNITED STATES DISTRICT COURT FOR

THE WESTERN DISTRICT OF LOUISIANA

LAFAYETTE DIVISION

- - - - - - - - - -

LLOYD DUGAS — CIVIL ACTION

versus — NUMBER 11,372

PELICAN CONSTRUCTION COMPANY, INC., et al

- - - - - - - - - - - - - - - - - - - - -

# D E C R E E

For written reasons assigned, it is now ordered and decreed:

I. That there be and there is judgment rendered herein in favor of the plaintiff, Lloyd Dugas, and against defendants Union Oil Company of California and Rowan Drilling Company, jointly, severally and in solido for the full sum of forty-five thousand and no/100 ($45,000.00) dollars, and for all costs of suit, with 5% interest from date of this decree until paid.

II. Judgment is further rendered in favor of Union Oil Company of California and against Rowan Drilling Company, on its cross-claim, for contribution in the sum of twenty-two thousand five hundred and no/100 ($22,500.00) dollars, with 5% interest from date of this decree until paid, and rejecting said cross-claim for indemnity over and costs of defense.

III. Judgment is further rendered in favor of Union Oil Company of California and against Pelican Construction

Company, Inc., on its cross-claim, for indemnity to the extent of Twenty-two thousand five hundred and no/100 ($22,500.00) dollars, with 5% interest from date of this decree until paid, being the amount of its liability less contribution from Rowan, plus attorneys' fees and costs of defense, the question of attorneys' fees and costs being separated from all other issues in this case and reserved for future decision after further proceedings herein.

IV. Judgment is further rendered herein rejecting and dismissing the cross-claim of Union Oil Company of California against Tri-State Insurance Company, filed herein.

V. Judgment is further rendered herein rejecting and dismissing the cross-claim of Pelican Construction Company, Inc., and Tri-State Insurance Company against Rowan Drilling Company, and rejecting and dismissing the cross-claim of Rowan Drilling Company against Pelican Construction Company and Tri-State Insurance Company.

VI. Judgment is further rendered against Pelican Construction Company rejecting and dismissing its third-party demand against Market Insurance Company.

Lafayette, Louisiana, March 22nd, 1972.

United States District Judge

Appendix C

**United States Court of Appeals**

FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

600 CAMP STREET
NEW ORLEANS, LA. 70130

June 15, 1973

Mr. Maurice Moe
Editorial Counsel
West Publishing Co.
St. Paul, Minnesota 55102

Re: No.72-2546 - Lloyd Dugas v. Pelican Construction Company, Inc., et al, Rowan Drilling Co., et al, Tri-State Insurance Co., et al
(Slip opinion dated June 11, 1973)

Dear Mr. Moe:

Prior to final publication, please correct the opinion in the above cause so that on page 6, nine lines from the bottom of the page, the words "and Tri-State" are deleted from the opinion.

With Kind appreciation, I am

Very truly yours,

EDWARD W. WADSWORTH, Clerk

By Susan L. Brun
Deputy Clerk

/sbl

cc: Mr. W. K. Christovich
Messrs. George V. Baus
Harold A. Thomas
Mr. H. Alva Brumfield, III
Mr. Nicholls Pugh, Jr.
Mr. Clarence A. Frost
Mr. Donald M. Pierce